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May 24, 2006

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MAY 24 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals Building, Room TW-B204
445-12th Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

**Re: MM Docket No. 04-184, Norwich, Connecticut
Presentation of Connecticut Public Broadcasting, Inc.
Ex Parte Notice**

Dear Ms. Dortch:

Pursuant to Section 1.1200, et seq. of the Commission's rules, Connecticut Public Broadcasting, Inc. (CPBI) hereby notifies the Commission of the following *ex parte* presentation in the above-referenced proceeding.

On Tuesday, May 23, 2006, at my request as counsel to Connecticut Public Broadcasting, Inc. (CPBI), a meeting was held to discuss the pending applications for exchange of DTV channels filed on October 8, 2003 for Stations WEDH-DT, Hartford, Connecticut (File No. BPEDT-19990113KG) and Station WEDN-DT, Norwich, Connecticut (File No. BMPEDT-20031008AAT), as well as the related rulemaking proceeding proposing the substitution of Channel *9 for Channel *45 at Norwich, Connecticut (MM Docket 04-184). This *ex parte* presentation has accordingly been filed in the Norwich rulemaking proceeding.

Attending the meeting for CPBI were Dana O'Neill, General Counsel of CPBI, Louis Robert du Treil, Jr., du Treil, Lundin & Rackley, Inc., engineering consultants to CPBI, and myself. Representatives of The Walt Disney Company/American Broadcasting Companies, Inc. (ABC), in attendance were Susan Fox, Bill Beam, Al Resnick, Dave Converse, Antoon Uyttendaele and outside counsel Tom Davidson of Akin Gump Strauss Hauer & Feld, LLP; of Entravision Holdings, LLC was outside counsel Barry A. Friedman, Thompson Hine LLP; and FCC personnel, including Barbara Kreisman, Chief, Video Division, Media Bureau (MB); Eloise Gore, Assistant Division Chief, Policy Division, MB; Clay Pendarvis, Associate Division Chief, Video Division, MB; Andrew Long, Associate Bureau Chief, Office of the Bureau Chief, MB; Mary Beth Murphy, Division Chief, Policy Division, MB; Alan Stillwell, Senior Associate Chief (Policy), Office of Engineering and Technology (OET); Nam Pham, OET, MB legal and engineering staff persons Joyce Bernstein, Gordon Godfrey and Nazifa Sawez; and Kate Todryl, legal intern, Office of the Bureau Chief, MB.

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The attached outline and contour maps were distributed at the meeting. Ms. O'Neill, Mr. du Treil, Jr. and myself explained the need of CPBI for pre-transition relief in the form of a grant of the channel exchange and issuance of construction permits for Station WEDH-DT on Channel *45 at Hartford and for Stations WEDN-DT on Channel *32 at Norwich; and the completion of the rulemaking to substitute proposed DTV *9 for Norwich so that CPBI could promptly file an application to modify the license for WEDN-DT and implement the proposal as filed in 2003 and 2004. We explained that the FCC could take these actions in compliance with the rules that have governed all pre-freeze DTV channel exchange and DTV allotment change proceedings. We further explained that there were no requests for waiver, that technical objections raised by ABC and Entravision had been thoroughly addressed in two rounds of pleadings, and that action was urgently needed for CPBI to finalize the Hartford site lease and system design and to implement DTV service for its flagship Station WEDH-DT at Hartford. The technical calculation methods used by CPBI were discussed and ABC agreed to review the materials and explore possible settlement routes with CPBI. There were discussions of the complications raised by the development of the post-transition DTV Table. CPBI pressed for action on the basis of the rules that have been in place prior to and since the development of the policy guidelines used in Channel Election and Tentative DTV Channel Allotments.

Please direct any questions you may have to the undersigned at 202-833-1700.

Respectfully submitted,

CONNECTICUT PUBLIC BROADCASTING

By: 
Steven C. Schaffer

cc: Andrew Long - FCC MB
Mary Beth Murphy - FCC MB
Eloise Gore - FCC MB
Barbara Kreisman - FCC MB
Clay Pendarvis - FCC MB
Joyce Bernstein - FCC MB
Gordon Godfrey - FCC MB
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Alan Stillwell Sr. - FCC OET
Nam Pham - FCC OET
Kate Todryl - FCC MB
Susan Fox, Disney-ABC
Tom Davidson, Akin Gump, counsel for Disney-ABC
Barry Friedman, Thompson Hine, outside counsel to Entravision, Inc.
Mark J. Prak, counsel to Hearst-Argyle Properties, Inc.
Kevin P. Latek, Esq., counsel to Meredith Corporation

**CONNECTICUT PUBLIC BROADCASTING
DTV CHANNELS FOR WEDH, HARTFORD AND WEDN, NORWICH**

Allotments, Elections, and DTV Operating Status

WEDH Hartford:

24 analog allotment
32 digital allotment
45 digital election
No CP, so no operating DTV

WEDN Norwich:

53 analog allotment
45 digital allotment
9 digital election and tentative designation
Licensed DTV on 45

2003 Digital Channel Exchange Proposal (BPEDT-19990113KG, BMPEDT-20031008AAT)

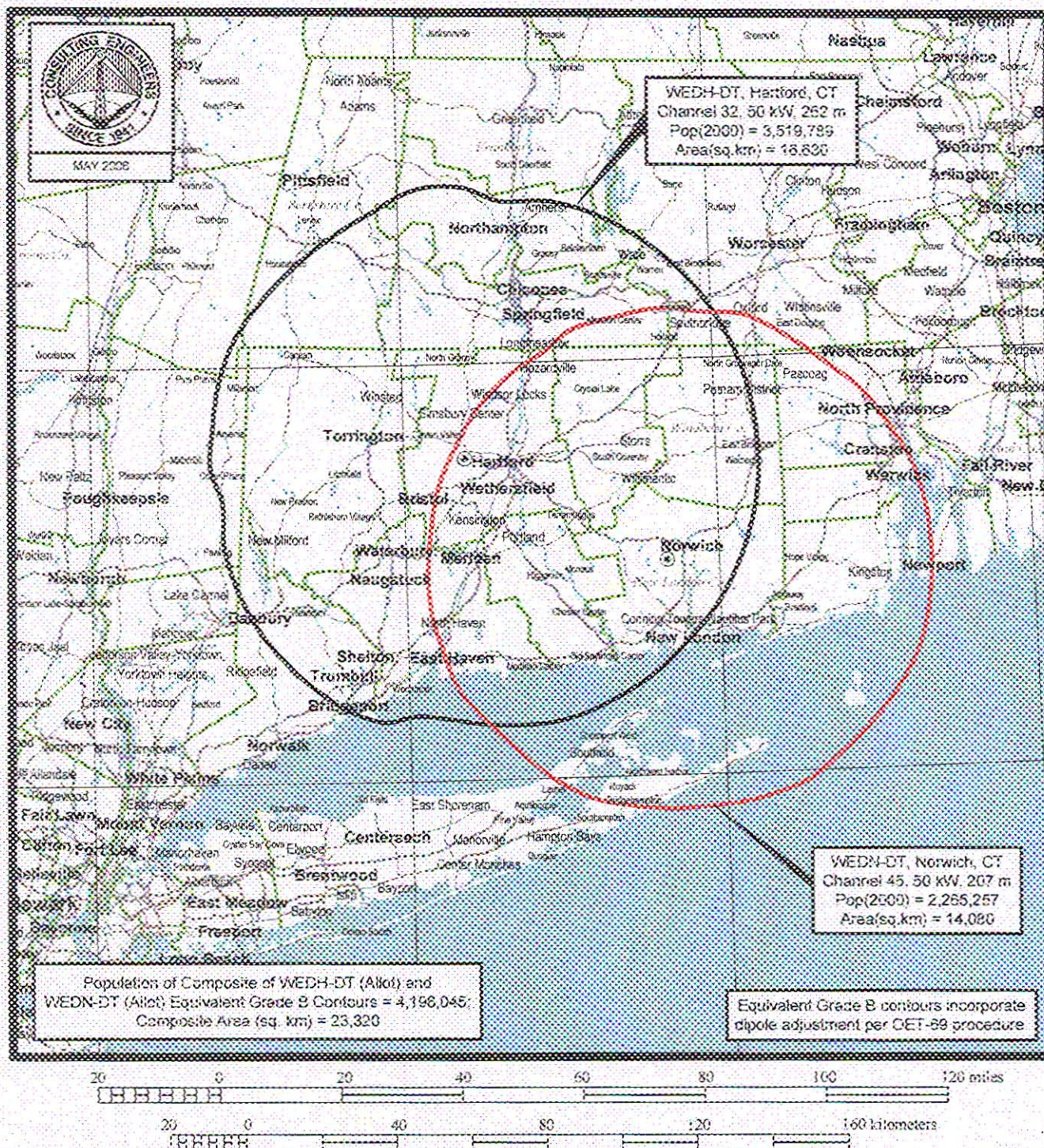
- ❖ 45-D to Hartford, 32-D to Norwich, per 73.622(c), 73.623(g).
- ❖ WEDH-DT-45 Hartford should be approved because:
 - Gain of 1,275,810 population as compared to 32-D
 - Partially overcomes historic UHF/VHF disparity in Hartford
 - No FCC-cognizable interference to WABC-DT if on 45 in NYC (1.7 %)
 - No FCC-cognizable interference to WUVN-DT, Hartford (.064 %)
 - 32-D is no longer practical for WEDH in Hartford:
 - if co-locate with WTIC-DT-31, interference to/from WFSB-DT-33;
 - if co-locate with WFSB-DT-33, interference to/from WTIC-DT-31.
- ❖ WEDN-DT-32 Norwich should be approved because:
 - Service reduction from combined WEDH-DT-45 Hartford and WEDN-DT-32 Norwich as compared to licensed WEDN-DT-45 is mostly over water, and affected viewers can receive other noncommercial and commercial service. See Waller, Inc., DA 06-923 (April 24, 2006); Qualcomm, DA 06-870 (April 18, 2006); KNTV, 19 FCC Rcd 15479, 15485 n.11 (2004).
- ❖ Result: Channel exchange is grantable in its own right.

2004 Rulemaking Proposal (NPRM: DA 04-1318, MB Docket 04-184)

- ❖ Substitute 9-D for 45-D at Norwich.
- ❖ Overcomes service loss resulting from proposed channel exchange.
- ❖ Gain of 1,029,678 persons compared with present 45-D.
- ❖ No FCC-cognizable interference to WMUR-DT on 9 (tentative channel designation) (1.86 %).
- ❖ Rulemaking petition noted pendency of channel exchange applications, offered to compare 9-D with 32-D for rulemaking if exchange were granted (Jan. 9, 2004, p. 3 n.3).
- ❖ NPRM was issued but remains pending, so 45-D has not been released at Norwich.

Relief requested

- ❖ Combination of 45-D Hartford and 9-D Norwich provides superior service and creates no interference in violation of 2%/10% rule.
- ❖ FCC should grant 45/32 channel exchange conditioned on construction of WEDN-DT on 9 rather than on 32, per pending rulemaking to be granted concurrently. See Digital Television Broadcast Stations (Salt Lake City, Ogden and Provo, Utah), 15 FCC Rcd 10568 (2000) (inter-dependent DTV channel substitutions and channel swap granted in single decision).
- ❖ Alternatively, grant channel exchange without conditions, then immediately grant rulemaking.
- ❖ In either case, rulemaking grant order should note that FCC has approved exchange of 45-D for 32-D at Norwich, so that 9-D will be replacing 32-D rather than 45-D there.



PREDICTED EQUIVALENT GRADE B COVERAGE CONTOURS FOR WEDH-DT AND WEDN-DT ORIGINAL DIGITAL ALLOTMENT FACILITIES

du Treil, Lundin & Rackley, Inc. Sarasota, Florida



PREDICTED EQUIVALENT GRADE B COVERAGE CONTOURS FOR WEDH-DT AND WEDN-DT PROPOSED DIGITAL ALLOTMENT FACILITIES

du Treil, Lundin & Rackley, Inc. Sarasota, Florida